Supreme Court, U.S.
FILED
991126 DEC 4 2000
OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

MAURICIO RAUL GUZMAN,

Petitioner,

vs.

THE STATE OF TEXAS,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Criminal Appeals Of Texas

PETITION FOR WRIT OF CERTIORARI

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63 p

I. QUESTION PRESENTED

A. Whether the Petitioner's guilty plea was knowingly and voluntarily entered when the trial court failed to admonish the Petitioner at the time of his plea of guilty of the full punishment ramifications and consequences of such plea mandated under the then existing Texas civil statute Article 6252-13c.1, now codified in Chapter 62 of the Code of Criminal Procedure?

II. LIST OF PARTIES UNDER SUPREME COURT RULES 14.1 and 29.6

The undersigned counsel of record for Petitioner Mauricio Raul Guzman certifies that the following list includes the defendants, all prior counsel in the case and all other persons to have a financial or other potential interest in the outcome of this case based on the information reasonably available to the undersigned. These representations are made in order that the Justices of this Court may evaluate possible disqualifications or recusal.

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PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

COMES NOW Petitioner Mauricio Raul Guzman to file his petition for a writ of certiorari to the Court of Criminal Appeals of the State of Texas, on issue of:

I. QUESTION PRESENTED

A. Whether the Petitioner's guilty plea was knowingly and voluntarily entered when the trial court failed to admonish the Petitioner at the time of his plea of guilty of the full punishment ramifications and consequences of such plea mandated under the then existing Texas civil statute, Article 6252-13c.1, now codified in Chapter 62 of the Code of Criminal Procedure?

V. CITATIONS TO OPINIONS BELOW

The opinion of the court of appeals (App. A, infra, 1a) is reported at 993 S.W. 2d 232 (Tex. App. 1999). There is no state trial court opinion.

VI. JURISDICTION

The decision of the Court of Appeals for the Fourth District was rendered on April 7, 1999 (App. A, infra, 1a). Petitioner did not file a motion for rehearing on the decision of the Court of Appeals. A timely petition for Discretionary Review by the Texas Court of Criminal

Appeals was thereafter refused on October 6, 1999 (App. C, infra, 14a).

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

VII. STATUTES INVOLVED IN THE QUESTION PRESENTED

Texas Civil Statutes Article 6252-13c.1 in pertinent part states:

> "Sec. 2 (a) . . . The person shall satisfy the requirements of this subsection not later than the seventh day after the person's *arrival* in the municipality . . . (b) . . . The registration form shall require: (1) the person's full name, each alias, date of birth, sex, race, height, weight, eye color, hair color, social security number, driver's license number, shoe size, and home address; (2) a photograph. . . . and a complete set of fingerprints; (3) the type of offense . . . , the age of the victim, the date of conviction, and . . . punishment received; and (4) any other information required . . . (d) On the day a court pronounces a sentence of imprisonment, deferred adjudication, community supervision, juvenile probation, fine only, or other disposition for a person who is subject to registration under this article, the court shall: (1) inform the person of the person's duty to register . . . or certify that the person was informed of the duty . . .
>
> Sec. 3 (c) not later than the 10th day after the date on which the person arrives in another state in which the person intends to reside, the person must register with the law enforcement agency . . . (e) not later than the eighth day after

> receiving a registration form . . . the authority publish notice in English and Spanish in at least one newspaper of general circulation in the county in which the person subject to registration intends to reside. The authority shall publish a duplicate notice . . . during the week immediately following the week of initial publication. The authority shall immediately provide notice to the superintendent of public schools . . .
>
> Sec. 9. (a) The duty to register for a person . . . ends on the 10th anniversary of the date on which. . . . (3)(b) the person is released from the institutional division of the Texas Department of Criminal Justice or the person discharges parole or community supervision, whichever is later."

Texas Civ. Stat. Ann. art. 6252-13c.1.

VIII. STATEMENT OF THE CASE

Pursuant to an indictment issued by the grand jury of Harris County, Texas, Petitioner was charged with aggravated sexual assault of a child under the age of fourteen. Venue was in the 351st District Court of Harris County, Texas, where the Petitioner entered a plea of guilty without an agreed recommendation and was sentenced by visiting Judge Jon Hughes after preparation and presentation of a Pre-sentence Investigation Report. Judge Hughes found the Petitioner guilty and assessed punishment at six years imprisonment in the Texas Department of Criminal Justice Institution Division.

This conviction was affirmed by the Court of Appeals of the Fourth District of Texas on the 7th day of April

1999. That court held that the duty to register as a sexual offender was a collateral consequence, not a direct consequence, and failure to admonish the defendant of it was harmless error. *Guzman v. State*, 993 S.W.2d 232, 236 (Tex. App. – San Antonio 1999). Furthermore, the court held that the burden of harm shifted to the Petitioner "to show that he pleaded guilty without understanding the consequences of his guilty plea, and as a result, suffered harm." *Id* at 233 (Citations omitted). The Court of Criminal Appeals of Texas then refused a Petition for Discretionary Review on October 6, 1999.

IX. REASONS FOR GRANTING THE WRIT

Many states' legislatures, including Texas and Alaska have, since the time of Petitioner's Plea, amended their states' admonishment requirements for guilty pleas to include a warning regarding the required registration for sex offenders. *See* Texas Code Crim. P. Ann. art. 26.13(b) (West 1999). Just as the court found in *Peterson v. State of Alaska*,

> " . . . if the defendant was not otherwise aware of the sex offender registration requirement, and if the defendant would not have entered his plea had he known of this requirement, then the defendant is entitled to withdraw his plea."

Peterson v. State of Alaska, 988 P.2d 109, 111.

It is a violation of due process to allow a defendant to plead guilty to a finite sentence in prison without being admonished of the fact that he must comply with the burdensome registration requirements 10 more years of

his life *after* serving that sentence. Without this information, the defendant is not making a knowing and voluntary decision.

A. Whether the Petitioner's guilty plea was knowingly and voluntarily entered when the trial court failed to admonish the Petitioner at the time of his plea of guilty of the full punishment ramifications and consequences of such plea mandated under the then existing Texas civil statute, Article 6252-13c.1, now codified in Chapter 62 of the Code of Criminal Procedure?

Pleading guilty to an offense covered under the sexual offender registration program subjects the person to not only the full-range of incarceration available under the various criminal statutes but also extends his punishment to continue to register as a sexual offender in his community as well as with the department of public safety and local sheriff for an additional ten years beyond the last date he serves in prison or the last date he is on parole, whichever is later. *See* Texas Civ. Stat. Ann. art. 6252-13c.1 § 9. Moreover, the registration involves publication of his whereabouts in the local newspaper in the community in which he resides on at least two occasions every time he changes his residence. *Id.* at § 3. Loss of privacy and the subjection to public ridicule and scrutiny represents a dramatic increase in the range of punishment above and beyond all other felony offenses that are not classified as sexual offenses. *Id.* Had the Petitioner known of this additional punishment that is above and beyond that which was explained to him in the court's admonishments and consultations with his counsel, Petitioner

would not have pled guilty but would have put the state to their proof knowing they only had one seven-year-old witness.

At no time did Petitioner's trial lawyer or his trial judge advise Petitioner of the mandatory requirement that he subject himself to an additional ten years of public humiliation beyond what period of probation, deferred adjudication, or incarceration he ultimately was sentenced to. The only place in the record any reference is made to registration pursuant to Article 6252 Section 13c.1 is at the very end of the pre-sentence investigation report in the section entitled, *VI. Supervision Plan*, where it is stated: "Should the court elect to grant to grant the defendant probation, the following stipulations are offered . . . (g) defendant must register as a sex offender with local law enforcement." It should be noted that this mention of the registration requirement was only available to the Petitioner immediately prior to sentencing and long after his involuntary plea of guilty.

This apparent effort to hide the ball from the Petitioner resulted in his pleading guilty without full knowledge and understanding of the consequences of his plea thus rendering the plea of guilty involuntary and made without full knowledge.

B. The Decision of the Court of Appeals is Erroneous

The Court of Appeals erred in holding that the trial court did not fail to adequately admonish the Petitioner at the time of his plea of guilty of the full punishment ramifications and consequences of such plea. Specifically,

the trial court failed to apprise the Petitioner of registration requirements for a person convicted as a sex offender under the then existing Texas civil statutes Section 7, Article 6252 13c.1, now codified in Chapter 62 of the Code of Criminal Procedure. Failure to fully admonish the Petitioner of the consequences of his plea of guilty resulted in the plea of guilty not being knowingly and voluntarily entered.

The Court of Appeals erred in holding that the failure of trial counsel to inform Petitioner of the full range of punishment, ramifications, and consequences of his plea of guilty did not amount to ineffective assistance of counsel.

The Court of Appeals decided an important question of state law that had not been, but should have been, settled by the Court of Criminal Appeals in that the long term registration and reporting requirements of the sex offender reporting statute flows as directly from the conviction as does the other punishments available. Rather than an ancillary matter, such as an immigration deportation case arising as a result, the registration and recording requirements of Chapter 62 of the Code of Criminal Procedure are an integral part of the punishment scheme that the defendant had a right to know about prior to his plea of guilty. Otherwise his plea was not knowingly and voluntarily entered. *See Britton v. State*, 887 S.W.2d 188 (Tex. App. – Ft. Worth 1994).

C. The Question Presented is Important

The Texas Legislature has since, after the trial court and appellate courts rendered judgment, enacted an

amendment to Article 26.13 of the Code of Criminal Procedure that requires the courts to inform citizens of the consequences of a guilty plea as discussed above. Now the courts must admonish the defendant of the range of the punishment and of the fact that the defendant will be required to meet the registration requirements of Chapter 62. Due process now, and at the time of Petitioner's plea of guilty, requires a plea of guilty to be knowingly and voluntarily entered. Sex offender registration, following completion of all incarceration and parole or probation, has become common among the states. Advising citizens accused of a sex offense about the full ramifications of a plea of guilty is necessary for a fair trial. This court should address this issue.

X. CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

Court of Appeals
Fourth Court of Appeals District of Texas
San Antonio

* * *

[LOGO]

OPINION

No. 04-98-00323-CR

Mauricio Raul **GUZMAN**,
Appellant,

v.

The **STATE** of Texas,
Appellee.

From the 351st Juducial District Court,
Harris County, Texas
Trial Court No. 742337
Honorable Jon Hughes, Judge Presiding

Opinion by: Karen Angelini, Justice

Sitting: Catherine Stone, Justice
Paul W. Green, Justice
Karen Angelini, Justice

Delivered and Filed: April 7, 1999

AFFIRMED

Facts and Procedural Background

On December 5, 1997, Mauricio Raul Guzman pleaded guilty to aggravated sexual assault of a child

under 14 years of age. In addition to waiving his right to trial, Guzman waived his right to have the court administer oral admonishments, his right to have the court reporter record the plea, and his right to appeal without permission from the trial court. The trial court assessed punishment at 6 years' imprisonment. The trial court did not grant Guzman permission to appeal his conviction. Guzman appeals raising two points of error.

Discussion

Jurisdiction

As a general rule, a defendant who pleads guilty and whose punishment does not exceed that suggested by the plea bargain is not allowed to appeal any matter without the trial court's permission, except rulings on pretrial motions and jurisdictional defects. *See* Tex.R.App. P. 25.2 (formerly Rule 40(b)(1)). The Texas Court of Criminal Appeals has held, however, that a plea-bargaining defendant is entitled to appeal to challenge the voluntariness of a negotiated guilty plea. *See Flowers v. State*, 935 S.W.2d 131, 133 (Tex.Crim.App.1996) (construing predecessor to Rule 25.2(b)(3)). Accordingly, we have jurisdiction to review Guzman's points of error regarding the voluntariness of his guilty plea and any jurisdictional defects.

Voluntariness of Guilty Plea

In his first point of error, Guzman contends he did not enter a knowing and voluntary guilty plea. Guzman contends the trial court's admonishments were inadequate because the court failed to admonish him regarding

the statutory requirement[1] that he register as a sexual offender following service of his prison term. Guzman implies that such failure prevented him from understanding the consequences of entering his guilty plea.

Before accepting a guilty plea, the trial court must admonish a defendant of: (1) the punishment range, (2) the fact that the State's sentencing recommendation is not binding on the court, (3) the limited right to appeal, and (4) the possibility of deportation. *See* TEX.CODE CRIM. PROC. ANN. art. 26.13(a) (Vernon 1989). The admonishments may be made either orally or in writing. *Id.* at 26.13(d). If the admonishments are made in writing, then the defendant and his lawyer must file a statement that the defendant understood the admonitions and was aware of the consequences of the guilty plea. *See id.*

To be constitutionally valid, a guilty plea must be knowing and voluntary. *See Brady v. United States*, 397 U.S. 742, 749 (1970); *see also* TEX.CODE CRIM. PROC. ANN. art. 26.13(b). When the record shows that the trial court admonished the defendant in substantial compliance with Article 26.13 of the Code of Criminal Procedure, the State establishes a prima facie showing that the plea was knowing and voluntary. *See* TEX.CODE CRIM. PROC. ANN. art. 26.13(c); *See Crawford v. State*, 890 S.W.2d 941, 944

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[1] The Sexual Offender Registration Program requires a person previously convicted of enumerated offenses, among other things, to register with local law enforcement authority in any municipality in which the person expects to reside for longer than seven days. *See* TEX.CODE CRIM. PROC. ANN. art. 62.01 et. seq. (Vernon Supp.1998) (previously TEX.REV.CIV. STAT. ANN. art. 6252-13c.1).

(Tex.App. – San Antonio 1994, no pet.). The burden then shifts to the defendant to show that he pleaded guilty without understanding the consequences of his guilty plea, and as a result, suffered harm. *See Fuentes v. State*, 688 S.W.2d 542, 544 (Tex.Crim.App.1985).

To substantially comply with Article 26.13, the trial court need not advise the defendant of every aspect of law relevant to his case or sentencing, only the direct consequences of entering a guilty plea. *See State v. Vasquez*, 889 S.W.2d 588, 590 (Tex.App. – Houston [14th Dist.] 1994, no pet.). Direct consequences of a plea are generally held to be those listed in the article 26.13 admonishments. *See Vasquez*, 889 S.W.2d at 590. Because a guilty plea is voluntary if the defendant is advised of all direct consequences of the guilty plea, his ignorance of a collateral consequence does not render the plea involuntary. *Brady*, 397 U.S. at 755; *Vasquez*, 889 S.W.2d at 590. Collateral consequences are those that are not a definite, practical consequence of a defendant's guilty plea. *Vasquez*, 889 S.W.2d at 590; *Ex Parte Morrow*, 952 S.W.2d 530, 536 (Tex.Crim.App.1997). There are numerous collateral consequences of pleading guilty to a felony, such as employment difficulties and restraint, ineligibility to vote, ineligibility to serve on a jury panel, and restrictions on travel. *Vasquez*, 889 S.W.2d at 590. Thus, for Guzman's guilty plea to be voluntary, he must have been made aware of the direct consequences of his plea.

These long followed standards seem circular when, as here, the defendant raises an argument that his plea was involuntary because he did not receive admonishment of a direct consequence of his guilty plea and, therefore, did not understand the consequences of such

plea. In such event, this court must first address the issue whether the admonishment which the defendant contends should have been given is a direct consequence of the guilty plea. If it is, and the trial court failed to administer the admonishment, the guilty plea is rendered involuntary. *Brady*, 397 U.S. at 755; *Vasquez*, 889 S.W.2d at 590. If the proposed admonishment addresses a collateral consequence of entering a guilty plea, and the trial court otherwise substantially complied with article 26.13, the State satisfies its burden. *See* TEX.CODE CRIM. PROC. ANN. art. 26.13(c); *See Vasquez*, 889 S.W.2d at 590. The defendant must then show that he did not otherwise understand the consequences of entering the guilty plea and subsequent harm. *Fuentes*, 688 S.W.2d at 544.

The determinate issue in this case is whether the statutory duty to register as a sexual offender following service of imprisonment is a direct consequence of entering a guilty plea. This issue is one of first impression. If we hold that the duty to register is a direct consequence of entering a guilty plea, the trial court's failure to admonish Guzman regarding this duty renders his guilty plea involuntary. If we hold that it is not, the burden shifts to Guzman to show lack of understanding of the consequences of entering the plea and harm suffered.

In a similar juvenile case, the Texarkana court addressed this issue in the realm of admonishments required by Texas Family Code § 54.03. *Cf. In re B.G.M.*, 929 S.W.2d 604, 606 (Tex.App. – Texarkana 1996, no writ). In *In re B.G.M.*, the court assessed the language and intent of the predecessor statute, TEX.REV.CIV. STAT. ANN. art. 6252-13c.1, and determined "the Sexual Offender Registration Program to be remedial rather than punitive and

the consequences of registration to be collateral rather than direct." *Id.* at 606-07.

Other jurisdictions are divided on the issue whether failure to admonish a defendant regarding his duty to register as a sexual offender invalidates his guilty plea. In the minority, California and North Dakota hold that the registration duty is a direct consequence of entering a guilty plea and, thus requires admonishment. *See In re Birch*, 515 P.2d 12, 16-17 (Cal. 1973); *see also People v. McClellan*, 862 P.2d 739, 745 (Cal. 1993); *accord State v. Breiner*, 562 N.W.2d 565, 567 (N.D.1997).[2] However, the majority view reasons that laws requiring a sexual offender to register are remedial, not punitive and, therefore, the statutory registration requirements are collateral, not direct consequences of a guilty plea. *See State v. Young*, 542 P.2d 20, 22 (Ariz. 1975); *People v. Taylor*, 561 N.E.2d 393, 393 (Ill. App. Ct. 1990); *Doe v. Poritz*, 662 A.2d 367, 396-97 (N.J. 1995); *State v. Ward*, 869 P.2d 1062, 1068-69 (Wash. 1994).

We reject Guzman's invitation to create a new required admonishment under article 26.13. We follow *In re B.G.M.* and the majority view and hold that the statutory duty to register as a sexual offender is a collateral consequence of a guilty plea and, therefore, a trial court does not have an affirmative duty to inform the accused of such duty prior to accepting a guilty plea. The plain

---

[2] The relevant statute in North Dakota stated, "The court shall require a person to register by stating this requirement on the court records." *See* N.D. CENT.CODE § 12.1-32-15(2). The comparable and applicable Texas statute does not contain this requirement. *See* TEX.CODE CRIM. PROC. ANN. art. 62.03.

language of the statute requiring registration as a sexual offender does not require preadjudication admonishment. The statute specifically requires that prior to release from a penal institution, an official of the institution shall inform the person of the requirements under the registration act. *See* TEX.CODE CRIM. PROC. ANN. art. 62.03(a)(1) (Vernon Supp.1998). Accordingly, the requirements are remedial, not punitive. Mandated registration as a sex offender is not a definite, practical consequence of a defendant's guilty plea, as it is comparable to other adjudicated collateral consequences of pleading guilty: ineligibility to vote, ineligibility to serve on a jury panel, and restrictions on travel and employment. Consequently, such registration is a collateral consequence of a guilty plea, not a direct consequence, and the trial court's failure to admonish a defendant of such requirement does not invalidate a guilty plea. Accordingly, the State established a prima facie showing that Guzman's plea was knowing and voluntary. The burden, then, shifts to Guzman to show that he did not understand the consequences of entering his plea and harm. *Fuentes*, 688 S.W.2d at 544.

After waiving oral admonishments, Guzman signed a "Court's Admonishment and Defendant's Waivers and Affidavit of Admonitions" form indicating that he understood the consequences of his guilty plea and entered it knowingly and voluntarily. The signed waiver complied with Article 26.13. Nothing in the record supports Guzman's theory that he did not understand the consequences of his plea.

The record shows that Guzman was properly admonished, and he was aware and understood the ramifications incident to entering his guilty plea. Because

Guzman's guilty plea was entered voluntarily and knowingly, we overrule his first point of error.

Ineffective Assistance of Counsel

In his second point of error, Guzman contends his trial counsel was ineffective by failing to fully explain the consequences of entering a guilty plea. Specifically, Guzman contends his trial counsel's failure to advise him of the registration requirements rendered his guilty plea involuntary. To the extent Guzman contends his counsel's ineffective assistance rendered his guilty plea involuntary, we will consider this point of error.

In attacking a guilty plea on the ground of ineffective assistance of counsel, the essential requirement is a showing that the plea of guilty was unknowingly and involuntarily made. *Ex parte Adams*, 707 S.W.2d 646, 648 (Tex.Crim.App.1986) (orig.proceeding); *Gonzales v. State*, 963 S.W.2d 844, 848 (Tex.App. – San Antonio 1998, no pet.). However, a guilty plea is not voluntary if made as a result of ineffective assistance of counsel. *Gonzales*, 963 S.W.2d at 848. Therefore, the constitutional validity of a guilty plea made upon the advice of counsel depends on whether counsel's performance was reasonably competent, rendering a defendant effective representation during the particular proceedings. *Ex parte Battle*, 817 S.W.2d 81, 83 (Tex.Crim.App.1991); *Gonzales*, 963 S.W.2d at 848.

In evaluating a claim of ineffective assistance of counsel arising out of the plea process, we must apply the *Strickland* test, which requires that the defendant demonstrate (1) counsel's representation fell below an objective standard of reasonableness, and (2) there is a reasonable

probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984); *Hernandez v. State*, 726 S.W.2d 53, 56 (Tex.Crim.App.1986). These two prongs must be established by a preponderance of the evidence. *Moore v. State*, 694 S.W.2d 528, 531 (Tex.Crim.App.1985). Accordingly, the allegation of ineffective assistance must be firmly founded and affirmatively demonstrated in the record. *McFarland v. State*, 928 S.W.2d 482, 500 (Tex.Crim.App.1996); *Brown v. State*, 974 S.W.2d 289, 292 (Tex.App. – San Antonio 1998, pet. ref'd). Furthermore, we must indulge in a strong presumption that the counsel's conduct was reasonable. *Strickland*, 466 U.S. at 689.

Guzman's argument is without merit and fails under the first prong of the *Strickland* test. The record does not affirmatively demonstrate that trial counsel unreasonably failed to advise Guzman regarding the sexual-offender registration requirement. The record does indicate that counsel's performance was reasonably competent. In his signed "Statements and Waivers," Guzman stated that he fully consulted with his attorney regarding the consequences of his guilty plea, he was satisfied with the representation provided, and he received effective and competent representation.

Because the record does not demonstrate that counsel's performance rendered Guzman's guilty plea involuntary, his second point of error is overruled.

Karen Angelini, Justice

PUBLISH

APPENDIX B

Court of Appeals
Fourth Court of Appeals District of Texas
San Antonio

* * *

JUDGMENT

No. 04-98-00323-CR

Mauricio Raul **GUZMAN**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 351st Judicial District Court,
Harris County, Texas
Trial Court No. 742337
Honorable Jon Hughes, Judge Presiding

BEFORE JUSTICE STONE, JUSTICE GREEN,
AND JUSTICE ANGELINI

In accordance with this Court's opinion of this date, the judgment of the trial court is AFFIRMED.

SIGNED April 7, 1999.

/s/ Karen Angelini
KAREN ANGELINI
JUSTICE

JUDGMENT ON PLEA OF GUILTY/NOLO CONTENDERE/NOT GUILTY

BEFORE COURT - WAIVER OF JURY TRIAL

CAUSE NO. 742337

THE STATE OF TEXAS

VS.

/s/ Mauricio Raul Guzman
(Name of Defendant)
AKA _____

IN THE 351st DISTRICT COURT

COUNTY CRIMINAL COURT AT LAW NO. _____

OF HARRIS COUNTY, TEXAS

Judge Presiding: Jon Hughes

Attorney for State: Michelle Stansbury

Attorney for Defendant: Ed Chernoff

[ ] Defendant Waived Counsel

Offense Convicted of: Aggravated Sexual Assault - Child

Date of Judgment: 02-25-1998

Date Sentence Imposed: 02-25-1998

Sentence to Begin Date: 02-25-1998

Date of Offense: 11-17-1996

[ ] A MISDEMEANOR, CLASS: A | B | C

[X] A FELONY, DEGREE:
SJ | 3rd | 2nd | 1st | CAPITAL

Terms of Plea Bargain (In Detail):
Without an agreed Recommendation

(Circle appropriate selection – N/A = not applicable)

Plea to Enhancement Paragraph(s):

1st Paragraph
True Not True N/A

2nd Paragraph
True Not True N/A

Charging Instrument:
Complaint | Indictment | Information

Findings on Enhancement(s):

1st Paragraph
True Not True N/A

2nd Paragraph
True Not True N/A

Plea: Guilty | Nolo Contendere | Not Guilty

Affirmative Findings:
Deadly Weapon: Yes | NO | N/A

Family Violence:
Yes | No | N/A

Hate Crime: Yes | No | N/A

(Mark all that apply)

Punishment Imposed and Place of Confinement: 6 yrs

[X] Institutional Division, TDCJ

[ ] State Jail Division, TDCJ

[ ] Harris County Jail

[ ] Fine Only

[ ] Fine in the Amount of $_____

[ ] Sentence suspended, Defendant placed on community supervision for _____

[ ] SEE SPECIAL INSTRUCTIONS, incorporated herein by reference.

15/50

Time Credited: 3

days toward incarceration _____

days toward fine and costs _____

days toward incarceration, fine and costs

COURT COSTS: $ 151.50

(Mark appropriate selections below, if applicable)

[X] Judgment Addendum incorporated herein by reference.

[ ] Driver's license is suspended for a period of _____ days/months/years.

[ ] The Defendant is entitled to _____ days credit toward suspension of driver's license.

RECORDER'S MEMORANDUM:
This instrument is of poor quality
and not satisfactory for photographic
recordation; and/or alterations were
present at the time of filming.

APPENDIX C

OFFICIAL NOTICE FROM COURT OF
CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITAL STATION,
AUSTIN, TEXAS 78711

[STAMP]

October 6, 1999
COA#: 04-98-00323-CR
RE: Case No. 0865-99
STYLE: GUZMAN, MAURICIO RAUL

On this day, the Appellant's Petition for Discretionary Review has been REFUSED.

GREG GLADDEN
3017 HOUSTON AVENUE
HOUSTON TX 77009

APPENDIX D

Art. 6252-13c.1. Sexual offender registration program

Definitions

Sec. 1. In this article:

(1) "Department" means the Department of Public Safety.

(2) "Local law enforcement authority" means the chief of police of a municipality or the sheriff of a county in this state.

(3) "Penal institution" means a confinement facility operated by or under a contract with any division of the Texas Department of Criminal Justice, a confinement facility operated by or under contract with the Texas Youth Commission, or a county jail.

(4) "Released" means discharged, paroled, or placed on mandatory supervision.

(5) "Reportable conviction or adjudication" means:

(A) a conviction for violation of Section 21.11 (Indecency with a child), 22.011 (Sexual assault), 22.021 (Aggravated sexual assault), 25.02 (Prohibited sexual conduct), Penal Code;

(B) a conviction for violation of Section 43.25 (Sexual performance by a child) or 43.26 (Possession or promotion of child pornography), Penal Code;

(C) a conviction for a violation of Section 20.04(a)(4) (Aggravated kidnapping), Penal Code, if the defendant committed the offense with intent to violate or abuse the victim sexually;

(D) a conviction for a violation of Section 30.02 (Burglary), Penal Code, if the offense is punishable under Subsection (d) of that section and the defendant committed the offense with intent to commit a felony listed in Paragraph (A) or (C) of this subdivision;

(E) the second conviction for a violation of Section 21.08 (Indecent exposure), Penal Code;

(F) a conviction for an attempt, conspiracy, or solicitation, as defined by Chapter 15, Penal Code, to commit an offense listed in Paragraph (A), (B), (C), or (D) of this subdivision;

(G) an adjudication of delinquent conduct based on a violation of one of the offenses listed in Paragraph (A), (B), (C), (D), or (F) of this subdivision or for which two violations of the offenses listed in Paragraph (E) of this subdivision are shown;

(H) a deferred adjudication for an offense listed in Paragraph (A), (B), (C), (D), or (F) of this subdivision;

(I) a conviction under the laws of another state for an offense containing elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), (C), (D), or (F) of this subdivision; or

(J) the second conviction under the laws of another state for an offense containing elements that are substantially similar to the elements of the offense of indecent exposure.

Registration

Sec. 2. (a) A person who has a reportable conviction or adjudication shall register or, if the person is a person for whom registration is completed under this article, verify registration as provided by Subsection (d) of this section, with the local law enforcement authority in any municipality where the person resides or intends to reside for more than seven days. If the person does not reside or intend to reside in a municipality, the person shall register or verify registration in any county where the person resides or intends to reside for more than seven days. The person shall satisfy the requirements of this subsection not later than the seventh day after the person's arrival in the municipality or county.

(b) The department shall provide the Texas Department of Criminal Justice, the Texas Tenth Commission, the Juvenile Probation Commission, and each local law enforcement authority, county jail, and court with a form for registering persons required on this article to register. The registration form shall require:

(1) the person's full name, each alias, date of birth, sex, race, height, weight, eye color, hair color, social security number, drivers license number, shoe size and home address,

(2) a photograph of the person and a complete set of the person's fingerprints,

(3) the type of offense the person was convicted of, the age of the victim, the date of conviction, and the punishment received, and

(4) any other information required by the department,

(c) Not later than the third day after a person's registering, the local law enforcement authority with whom the person registered shall send a copy of the registration form to the department.

Text of subsec. (d) as added by Acts 1995, 74th Leg., ch. 258, § 2

(d) A person for whom registration is completed under this article shall report to the applicable local law enforcement authority to verify the information in the registration form received by the authority under this article. The authority shall require the person to produce proof of the person's identity and residence before the authority gives the registration form to the person for verification. If the information in the registration form is accurate, the person shall verify registration by signing the Form. If the information is not accurate, the person shall make any necessary corrections before signing the form.

Text of subsec. (d) as added by Acts 1995, 74th Leg., ch. 576, § 1

(d) On the day a court pronounces a sentence of imprisonment, deferred adjudication, community supervision, juvenile probation, fine only, or other disposition for a person who is subject to registration under this article, the court shall:

(1) inform the person of the person's duty to register under the article and require the person to sign a written statement that the person was informed of the duty, or if the person refuses to sign the statement, certify that the person was informed of the duty.

(2) complete the registration form for the person and send the form to the department and:

(A) if the person is sentenced to a penal institution and imposition of sentence is not responded, to the penal institution, or

(B) if the person is sentenced to a penal institution and the imposition of the sentence is suspended or the person receives other disposition to the local law enforcement authority in the municipality or unincorporated area of the county in which the person expects to reside.

(a) If a person subject to registration under this article does not move to an intended residence by the end of the seventh day after the date on which the person is released on community supervision, parole or mandatory supervision or the date on which the person leased a previous residence, the person shall:

(1) report to the community supervision and corrections department officer or the parole officer supervising the person by not later than the seventh day after the date on which the person is released or the date on which the person leaves a previous residence, as applicable, and provide the officer with the address of the person's temporary residence; and

(2) continue to report to the person's supervising officer not less than weekly during any period of time in

which the person has not moved to an intended residence and provide the officer with the address of the person's temporary residence.

Prerelease notification

Sec. 3, (a) Before a person who will be subject to registration under this article is due to be released from a penal institution, an official of the penal institution shall:

(1) inform the person that:

(A) not later than the seventh day after the date on which the person is released on community supervision parole or mandatory supervision, or the date on which the person moves from a previous residence to a new residence in this state the person must:

(i) register or verify registration with the local law enforcement authority in the municipality or county in which the person intends to reside; or

(ii) if the person has not moved to an intended residence, report to the community supervision and corrections department officer or the parole officer supervising the person.

(B) not later than the seventh day before the date on which the person moves to a new residence in this state or another state, the person must report in person to the local law enforcement authority with whom the person last registered and to the community supervision and corrections department officer or the parole officer supervising the person; and

(C) not later than the 10th day after the date on which the person arrives in another state in which the person intends to reside, the person must register with the law enforcement agency that is identified by the department as the agency designated by that state to receive registration information, if the other state has a registration requirement for sex offenders.

(2) require the person to sign a written statement that the person was informed of the person's duties as described by Subdivision (1) of this subsection or, if the person refuses to sign the statement, certify that the person was so informed;

(3) obtain the address where the person expects to reside on the person's release and other registration information, including a photograph and complete set of fingerprints, and

(4) complete the registration form for the person.

(b) On the seventh day before the date on which a person who will be subject to registration under this article is due to be released from a penal institution, or on receipt of notice by a penal institution that a person who will be subject to registration under this article is due to be released in less than seven days, an official of the penal institution shall send the person's completed registration form to the department and to:

(1) the applicable local law enforcement authority in the municipality or county in what the person expects to reside, if the person experts to reside in this state; or

(2) the law enforcement agency that is identified by the department as the agency designated by another state

to receive registration information, if the person expects to reside in that other state and that other state has a registration requirement for sex offenders.

(c) If a person who is subject to registration under this article receives an order deferring adjudication, community supervision, or only a fine, the court pronouncing the order or sentence shall ensure that the prerelease notification and registration requirements specifies in this section are conducted on the day of entering the order or sentencing. If a community supervision and corrections department representative is available in court at the time a court pronounces a sentence of deferred adjudication or community supervision, the representative shall immediately conduct the prerelease notification and registration requirements specified in this section. In any other case in which the court pronounces a sentence under the subsection, the court shall designate another appropriate individual to conduct the prerelease notification and registration requirements specified in this section.

(d) If a person who has a reportable conviction for an offense described under Section 1(5)(I) or (J) of this article is placed under the supervision of the pardons and paroles division of the Texas Department of Criminal Justice or a community supervision and correction department under Article 42.11, Code of Criminal Procedure, the division or community supervision and corrections department shall conduct the prerelease notification and registration requirements specified in this section on the date the person is placed under the supervision of the division or community supervision and corrections department.

(e) Not later than the eighth day after receiving a registration form under Subsection (b), (c), or (d) of this section, the local law enforcement authority shall verify the age of the victim and the basis on which the person is subject to registration under this article. If the victim is a child younger than 17 years of age and the basis on which the person is subject to registration is not an adjudication of delinquent conductor a deferred adjudication and is not a conviction for an offense under Section 25.02, Penal Code, the authority shall immediately publish notice in English and Spanish in at least one newspaper of general circulation in the county in which the person subject to registration intends to reside. The authority shall publish a duplicate notice in the newspaper, with any necessary corrections, during the year immediately following the week of initial publication. If the victim is a child younger than 11 years of age, regardless of the basis on which the person is subject to registration, the authority shall immediately provide notice to the superintendent of public schools of the school district in which the person subject to registration intends to reside by mail to the district office.

(f) The local law enforcement authority shall include in the notice by publication in a newspaper the following information only

(1) the person's age and gender,

(2) a brief description of the offense for which the person is subject to registration and

(3) the municipality, street names and zip code number where the person intends to reside.

(g) The local law enforcement authority shall include in the notice to the superintendent of public schools any information the authority determines is necessary to protect the public except:

(1) the person's social security number, driver's license number or telephone number, and

(2) any information that would identify the victim of the offense for which the person is subject to registration.

Change of address

Sec. 4. (a) If a person required to register intends to change address, the person shall not later than the seventh day before the intended change, report in person to the local law enforcement authority with whom the person last registered and to the community supervision and correction department officer or the parole officer supervising the person and provide the authority and the officer with the person's anticipated move date and address.

(b) Not later than the third day after receipt of notice under Subsection (a) of this section, the person's community supervision and corrections department officer or parole officer shall forward the information provided under Subsection (a) of this section to the local law enforcement authority with whom the person last registered and, if the person intends to move to another municipality or county in this state to the applicable local law enforcement authority in that municipality or county.

(c) If the person moves to another state that has a registration requirement for sex offenders, the person shall not later than the 10th day after the date on which the person arrives in the other state, register with the law enforcement agency that is identified by the department as the agency designated by that state to receive registration information.

(d) Not later than the third day after receipt of information under Subsection (a) or (b) of this section, whichever is earlier, the local law enforcement authority shall forward this information to the department and if the person intends to move to another municipality or county in this state, to the applicable local law enforcement authority in that municipality or county,

(e) If a person who reports to a local law enforcement authority under Subsection (a) of this section does not move on or before the anticipated move date or dates not move to the new address provided to the authority the person shall

(1) report to the local law enforcement authority with whom the person last registered not later than the seventh day after the anticipated move date and provide an explanation to the authority regarding any change in the anticipated move date and intended residence, and

(2) report to the community supervision and corrections department officer or the parole officer supervising the person not less than weekly during any period in which the person has not moved to an intended residence.

(f) If the person moves to another municipality or county in this state the department shall inform the applicable local law enforcement authority in the new area of the person's residence not later than the third day after the date on which the department receives information under Subsection (a) of this section. Not later than the eighth day after the date in which the local law enforcement authority is informed under Subsection (a) of this section or under this subsection, the authority shall verify the age of the victim and the basis on which the person is subject to registration under this article. If the victim is a child younger than 17 years of age and the basis in which the person is subject to registration is not an adjudication of delinquent conduct or a deferred adjudication and is not a conviction for an offense under Section 25.02 Penal Code, the authority shall immediately publish notice in English and Spanish in at least one newspaper of general circulation in the county in which the person subject to registration intends to reside. The local law enforcement authority shall publish a duplicate notice in the newspaper, with any necessary corrections, during the week immediately following the week of initial publication. If the victim is a child younger than 17 years of age, regardless of the basis on which the person is subject to registration, the authority shall immediately provide notice to the superintendent of public schools of the school district in which the person subject to registration intends to reside by mail to the district office.

(g) The local law enforcement authority shall include in the notice by publication in a newspaper the following information only:

(1) the person's age and gender;

(2) a brief description of the offense for which the person is subject to registration; and

(3) the municipality, street name, and zip code number where the person intends to reside.

(h) The local law enforcement authority shall include in the notice to the superintendent of public schools any information the authority determines is necessary to protect the public, except:

(1) the person's social security number, driver's license number, or telephone number, and

(2) any information that would identify the victim of the offense for which the person is subject to registration.

(i) If the person moves to another state, the department shall, immediately on receiving information under Subsection (d) of this section:

(1) inform the law enforcement agency that is designated by the other state to receive registration information, if that state has a registration requirement for sex offenders; and

(2) send to the Federal Bureau of Investigation a copy of the person's registration form, including the record of conviction and a complete set of fingerprints.

Remedies related to public notice

Sec. 4A. A person subject to registration under this article may petition the district court for injunctive relief to restrain a local law enforcement authority from publishing notice in a newspaper as required by Section 3 or

Section 4 of this article. The court may issue a temporary restraining order under this section before notice is served and a hearing is held on the matter. After a hearing on the matter, the court may grant any injunctive relief warranted by the facts, including a restraining order or a temporary or permanent injunction, if the person subject to registration under this article proves by a preponderance of the evidence specific facts indicating that newspaper publication under Section 3 or Section 4 of this article would place the person's health and well-being in immediate danger.

Central database; public information

Sec. 5. (a) The department shall maintain a computerized central database containing only the information required for registration under this article.

(b) The information contained in the database is public information, with the exception of the person's photograph or any information:

(1) regarding the person's social security number, driver's license number, numeric street address, or telephone number; or

(2) that would identify the victim of the offense for which the person is subject to registration.

(c) A local law enforcement authority shall release public information described under Subsection (b) of this section to any person who submits to the authority a written request for the information. The authority may

charge the person a fee not to exceed the amount reasonably necessary to cover the administrative costs associated with the authority's release of information to the person under this subsection.

Immunity for release of public information

Sec. 5A. (a) The department, a penal institution, or a local law enforcement authority may release to the public information regarding a person required to register if the information is public information under this article.

(b) An individual agency, entity, or authority is not liable under Chapter 101, Civil Practice and Remedies Code, or any other law for damages arising from conduct authorized by Subsection (a) of this section.

(c) For purposes of determining liability, the release or withholding of information by an appointed or elected officer of an agency, entity, or authority is a discretionary act.

Sec. 6. Repealed by Acts 1995, 74t. Leg., ch. 258, § 15, eff. Sept. 1, 1995.

Failure to register

Sec. 7. (a) A person commits an offense if the person is required to register and fails to comply with this article.

(b) An offense under this section is a Class A misdemeanor.

(c) If it is shown at the trial of a person for an offense under this section that the person has previously

been convicted of an offense under this section, the person shall be punished for a felony of the third degree.

Exemptions

Sec. 8. (a) This article applies only to a reportable conviction or adjudication:

(1) occurring on or after:

(A) September 1, 1991, if the conviction is for or the adjudication is bsed on an offense listed in section 1(5)(A) of this article;

(B) September 1, 1993, if the conviction is for or the adjudication is based on an offense listed in Section 1(5)(B) of this article; or

(C) September 1, 1995, if the conviction is for an offense described under Section 1(5)(C), (D), (E), (F), (I), or (J) of this article; or

(2) for which an order of deferred adjudication is entered by the court on or after September 1, 1993.

(b) A person who has a reportable conviction or adjudication may petition a district judge in the county where the person resides or intends to reside for an exemption from this article. If the person shows good cause, the district judge shall grant the exemption.

Expiration of duty to register

Sec. 9 (A) The duty to register for a person with a reportable adjudication under Section 1(5)(D) of this article ends on the 10th anniversary of the date on which:

(1) the person ceases to be under the supervision of the Texas Youth Commission, if the person was committed to the Texas Youth Commission other than under a determinate sentence;

(2) the person is discharged from the Texas Youth Commission or the Texas Department of Criminal Justice, whichever date is later, if the person was committed to the Texas Youth Commission under a determinate sentence; or

(3) the disposition is made or the person completes the terms of the disposition, whichever date is later, if the person received a disposition that did not include a commitment to the Texas Youth Commission.

(b) The duty to register for a person with a reportable conviction, other than a conviction for a violation of Section 21.11(a)(1) 22.021, or 43.25, Penal Code, ends on the 10th anniversary of the date on which the person is released from the institutional division of the Texas Department of Criminal Justice or the person discharges parole or community supervision, which ever date is later.

(c) The duty to register for a person with a reportable conviction or adjudication based on an order of deferred adjudication under Section 1(5)(E) of this article, other than an order of deferred adjudication for a violation of Section 21.11(a)(1), 22.021, or 43.25, Penal Code, ends on the 10th anniversary of the date on which:

(1) the court dismisses the criminal proceedings against the person and discharges the person; or

(2) the person is released from the institutional division of the Texas Department of Criminal Justice or the person discharges parole or community supervision, if the court proceeded to final adjudication in the case.

APPENDIX E

Art. 62.02. Registration.

[Art. 62.02(a) under SB 1224 §1, passed May 26, 1999 and effective Sept. 1, 1999:]

[Art. 62.02(a) under HB 2145 §10, passed May 29, 1999 and effective Sept. 1, 1999:]

(a) A person who has a reportable conviction or adjudication or who is required to register as a condition of parole, release to mandatory supervision, or community supervision shall register or, if the person is a person for whom registration is completed under this chapter, verify registration as provided by Subsection (d), with the local law enforcement authority in any municipality where the person resides or intends to reside for more than seven days. If the person does not reside or intend to reside in a municipality, the person shall register or verify registration in any county where the person resides or intends to reside for more than seven days. The person shall satisfy the requirements of this subsection not later than the seventh day after the person's arrival in the municipality or county.

(b) The department shall provide the Texas Department of Criminal Justice, the Texas Youth Commission, the Juvenile Probation Commission, and each local law enforcement authority, county jail, and court with a form for registering persons required by this chapter to register. The registration form shall require:

(1) the person's full name, each alias, date of birth, sex, race, height, weight, eye color, hair color, social security number, driver's license number, shoe size, and home address;

(2) a photograph of the person and a complete set of the person's fingerprints;

(3) the type of offense the person was convicted of, the age of the victim, the date of conviction, and the punishment received;

(4) an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision; and

(5) any other information required by the department.

(c) Not later than the third day after a person's registering, the local law enforcement authority with whom the person registered shall send a copy of the registration form to the department.

(d) A person for whom registration is completed under this chapter shall report to the applicable local law enforcement authority to verify the information in the registration form received by the authority under this chapter. The authority shall require the person to produce proof of the person's identity and residence before the authority gives the registration form to the person for verification. If the information in the registration form is complete and accurate, the person shall verify registration by signing the form. If the information is not complete or not accurate, the person shall make any necessary additions or corrections before signing the form.

(e) A person who is required to register or verify registration under this chapter shall ensure that the person's registration form is complete and accurate with

respect to each item of information required by the form in accordance with Subsection (b).

(f) If a person subject to registration under this chapter does not move to an intended residence by the end of the seventh day after the date on which the person is released or the date on which the person leaves a previous residence, the person shall:

(1) report to the juvenile probation officer, community supervision and corrections department officer, or parole officer supervising the person by not later than the seventh day after the date on which the person is released or the date on which the person leaves a previous residence, as applicable, and provide the officer with the address of the person's temporary residence; and

(2) continue to report to the person's supervising officer not less than weekly during any period of time in which the person has not moved to an intended residence and provide the officer with the address of the person's temporary residence.

[Art. 62.02(g), under HB 2145, §10, passed May 29, 1999 and effective Sept. 1, 1999:]

[Art. 62.02(g), under SB 399, §5, passed May 26, 1999 and effective Sept. 1, 1999:]

(g) If the other state has a registration requirement for sex offenders, a person who has a reportable conviction or adjudication, who resides in this state, and who is employed, carries on a vocation, or is a student in another state shall, not later than the 10th day after the

date on which the person begins to work or attend school in the other state, register with the law enforcement authority that is identified by the department as the authority designated by that state to receive registration information.

Amended effective Sept. 1, 1999.

Effect of 1999 amendment (SB 2145, §10): "or who is required to register as condition of parole, release to mandatory supervision, or community supervision" added to section (a): added section (g)

Effect of 1999 amendment (SB 1224, §1): "or who is required to register as a condition of parole, release to mandatory supervision, or community supervision" added to section (a).

Effect of 1999 amendment (SB 2145, §10): added section (g).

[Art. 62.011, under HB 2145 §11, passed May 29, 1999 and effective Sept. 1, 1999:]

APPENDIX F

Code of Criminal Procedure
Chapter 26. Arraignment

Art. 26.11 – 26.13

Art. 26.13. Plea of Guilty

(a) Prior to accepting a plea of guilty or a plea of nolo contendere, the court shall admonish the defendant of:

(1) the range of the punishment attached to the offense;

(2) the fact that the recommendation of the prosecuting attorney as to punishment is not binding on the court. Provided that the court shall inquire as to the existence of any plea bargaining agreements between the state and the defendant and, in the event that such an agreement exists, the court shall inform the defendant whether it will follow or reject such agreement in open court and before any finding on the plea. Should the court reject any such agreement, the defendant shall be permitted to withdraw his plea of guilty or nolo contendere;

(3) the fact that if the punishment assessed does not exceed the punishment recommended by the prosecutor and agreed to by the defendant and his attorney, the trial court must give its permission to the defendant before he may prosecute an appeal on any matter in the case except for those matters raised by written motions filed prior to trial;

(4) the fact that if the defendant is not a citizen of the United States of America, a plea of guilty or nolo

contendere for the offense charged may result in deportation, the exclusion from admission to this country, or the denial of naturalization under federal law; and

(5) the fact that the defendant will be required to meet the registration requirements of Chapter 62, if the defendant is convicted of or placed on deferred adjudication for an offense for which a person is subject to registration under that chapter.

(b) No plea of guilty or plea of nolo contendere shall be accepted by the court unless it appears that the defendant is mentally competent and the plea is free and voluntary.

(c) In admonishing the defendant as herein provided, substantial compliance by the court is sufficient, unless the defendant affirmatively shows that he was not aware of the consequences of his plea and that he was misled or harmed by the admonishment of the court.

(d) The court may make the admonitions required by this article either orally or in writing. If the court makes the admonitions in writing, it must receive a statement signed by the defendant and the defendant's attorney that he understands the admonitions and is aware of the consequences of his plea. If the defendant is unable or refuses to sign the statement, the court shall make the admonitions orally.

(e) Before accepting a plea of guilty or a plea of nolo contendere, the court shall inquire as to whether a victim impact statement has been returned to the attorney representing the state and ask for a copy of the statement if one as been returned.

(f) The court must substantially comply with Subsection (e) of this article. The failure of the court to comply with Subsection (e) of this article is not grounds for the defendant to set aside the conviction, sentence, of plea.

(g) Before accepting a plea of guilty or a plea of nolo contendere and on the request of a victim of the offense, the court may assist the victim and the defendant in participating in a victim-offender mediation program.

[Subsection (h), under HB 2145, passed May 29, 1999, and effective Sept. 1, 1999:]

(h) Before accepting a plea of guilty nor nolo contendere from a defendant described by Subsection (a)(5), the court shall ascertain whether the attorney representing the defendant has advised the defendant regarding registration requirements under Chapter 62.

[Subsection (h), under SB 1125, passed May 18, 1999 and effective May 18, 1999:]

(h) Notwithstanding this article a court shall not order the state or any of its prosecuting attorneys to participate in mediation, dispute resolution, arbitration, or other similar procedures in relation to a criminal prosecution unless upon written consent of the state.

[*See* CCP art.27.13]

APPENDIX G

FOR PLEA: ADMONISHMENTS, STATEMENTS, AND WAIVERS / REV. 1-1-96

FOR OFFENSES SEPTEMBER 1, 1996 THROUGH AUGUST 31, 1997

CAUSE NO. 742337

THE STATE OF TEXAS	§	IN THE 351ST
VS.	§	DISTRICT COURT
	§	
/s/ Mauricio Raul Guzman,	§	OF
DEFENDANT	§	HARRIS COUNTY,
	§	TEXAS

ADMONISHMENTS

(Filed Dec. 5, 1997)

Pursuant to article 26.13 (d), Code of Criminal Procedure, the Court admonishes you the Defendant as follows and instructs you to place your initials by each item if you fully understand it:

[____] (1) you are charged with the felony of Aggravated Sexual Assault of a Child. ~~The State moves to reduce such charge to~~ _____. If convicted, you face the following range of punishment:

[____] **HABITUAL SEX OFFENDER:** a term of not less than life in the Institutional Division of the Texas Department of Criminal Justice for defendant convicted of aggravated sexual assault, aggravated kidnapping with the intent to violate or abuse the victim sexually, burglary with the intent to commit a sex offense, or indecency with a child; if enhanced with two prior felony convictions; and one of the convictions is for aggravated sexual

assault, sexual assault, aggravated kidnapping with the intent to violate or abuse the victim sexually, burglary with the intent to commit a sex offense, indecency with a child, sexual performance by a child, promotion or possession of child pornography, or prohibited sexual conduct.

[____] **HABITUAL OFFENDER:** if it is shown on the trial of a felony offense that the defendant has previously been finally convicted of two felony offenses, and the second previous felony conviction is for an offense that occurred subsequent to the first previous conviction having become final, on conviction he shall be punished by imprisonment in the institutional division of the Texas Department of Criminal Justice for life, or for any term of not more than 99 years or less than 25 years;

[RMG] **FIRST DEGREE FELONY:** a term of life or any term of not more than 99 years or less than 5 years in the Institutional Division of the Texas Department of Criminal Justice, and in addition, a fine not to exceed $10,000.00 may be assessed; if enhanced with one prior felony conviction, a term of life or any term of not more than 99 years or less than 15 years in the Institutional Division of the Texas Department of Criminal Justice, and in addition, a fine not to exceed $10,000.00 may be assessed;

[____] **SECOND DEGREE FELONY:** a term of not more than 20 years or less than 2 years in the Institutional Division of the Texas Department of Criminal Justice and in addition, a fine not to exceed $10,000.00 may be assessed; if enhanced with one prior felony conviction, a term of life or any term of not more than 99 years or less

than 5 years in the Institutional Division of the Texas Department of Criminal Justice, and in addition, a fine not to exceed $10,000.00 may be assessed;

[____] **THIRD DEGREE FELONY:** a term of not more than 10 years or less than 2 years in the Institutional Division of the Texas Department of Criminal Justice and in addition, a fine not to exceed $10,000.00 may be assessed; if enhanced with one prior felony conviction, a term of not more than 20 years or less than 2 years in the Institutional Division of the Texas Department of Criminal Justice, and in additional, a fine not to exceed $10,000.00 may be assessed;

[____] **STATE JAIL FELONY:** (under Art. 26.13 V.A.C.C.P.) a term of confinement in a State Jail for not less than 180 days or more than 2 years, and in addition, a fine not to exceed $10,000.00 may be assessed. Upon conviction for a State Jail felony offense, the period of confinement must be suspended and you must be placed under supervision of the Court for a period of not less than 2 years or more than five years, unless the defendant has been previously convicted of a felony, in which event the judgment may suspend the imposition of the sentence and place the defendant on community supervision or may order the sentence to be executed. The court may also suspend all or part of any fine assessed.

( ) As a condition of supervision, if you have never before been convicted of a felony offense the Court may order that you be confined for up to 90 days in the county jail or not less than 90 days or more than 180 days in a state jail.

( ) If you are convicted of delivery of less than 1 gram of Penalty Group 1 or Penalty

Group 2 controlled substance or delivery of five pounds or less but more than one-fourth ounce of marijuana, the Court may order as a condition of supervision that you be confined for up to 1 year in a state jail.

[____] **A STATE JAIL FELONY WITH A DEADLY WEAPON FINDING:** if a state jail felony punishable under Section 12.35 (a) of the Texas Penal Code is enhanced with a deadly weapon paragraph as defined by Section 1.07 of the PC was used or exhibited, a term of not more than 10 years or less than 2 years in the Texas Department of Criminal Justice, and in addition, a fine not to exceed $10,000.00 may be assessed.

[____] **A STATE JAIL FELONY WITH A PRIOR CONVICTION FOR A 3G OFFENSE UNDER ARTICLE 42.12, CODE OF CRIMINAL PROCEDURE:** if a state jail felony punishable under section 12.35 (a) of the Texas Penal Code is enhanced with a prior felony conviction for a 3g offense under Article 42.12, TCCP, a term of not more than 10 years or less than 2 years in the Texas Department of Criminal Justice, and in addition, a fine not to exceed $10,000.00 may be assessed.

[____] **A STATE JAIL FELONY WITH TWO STATE JAIL FELONY CONVICTIONS:** if a state jail felony punishable under Section 12.35 (a) of the Texas Penal Code is enhanced with two final state jail felony convictions, a term of not more than 10 years or less than 2 years in the Texas Department of Criminal Justice, and in addition, a fine not to exceed $10,000.00 may be assessed.

[____] **STATE JAIL FELONY WITH TWO FELONY CONVICTIONS:** if a state jail felony punishable under

section 12.35 (a) of the Texas Penal Code is enhanced with to [sic] previous final felony convictions, and the second previous felony convictions is for an offense that occurred subsequent to the first previous conviction becoming final, a term of not more than 20 years or less than 2 years in the Institutional Division of the Texas Department of Criminal Justice, and in addition, a fine not to exceed $10,000.00 may be assessed.

[____] **A STATE JAIL FELONY AND SENTENCED UNDER 12.44 (a):** a term of confinement in the county jail not to exceed one year which is a felony conviction.

[____] **A STATE JAIL FELONY AND SENTENCED UNDER 12.44 (b):** a term of confinement in the county jail not to exceed one year which is a misdemeanor conviction.

[____] **CLASS A MISDEMEANOR:** a term of confinement in the county jail not to exceed one year or a fine not to exceed $4000.00 or both.

[____] **CLASS B MISDEMEANOR:** a term of confinement in the county jail not to exceed 180 days or a fine not to exceed $2000.00 or both;

[____] **OTHER:** _____

_____

[____] (2) the recommendation, if any, of the prosecuting attorney as to punishment is not binding on the Court;

[____] (3) if there is any plea bargain agreement between the State and you, the Court will inform you in

open court whether it will follow such agreement before making any finding on your plea;

[____] (4) the Court will permit you to withdraw your plea of guilty or nolo contendere should it reject any plea bargain agreement;

[RMG] (5) if the punishment assessed by the Court does not exceed the punishment recommended by the prosecutor and agreed to by you and your attorney, the Court must give its permission to you before you may prosecute an appeal on any matter in this case except for those matters raised by you by written motion filed prior to trial;

[RMG] (6) if you are not a citizen of the United States of America, a plea of guilty or nolo contendere for the offense with which you are charged in this case may result in your deportation, or your exclusion from admission to this county, or your denial of naturalization under federal law.

STATEMENTS AND WAIVERS OF DEFENDANT

NOW COMES the Defendant in the above captioned cause and makes the following statements and waivers prior to the Court accepting my plea of guilty or plea of nolo contendere.

[RMG] (1) I am mentally competent and I understand the nature of the charge against me;

[RMG] (2) I understand the admonishments of the trial court set out herein;

[RMG] (3) I hereby WAIVE the right to have the trial court orally admonish me;

[RMG] (4) I WAIVE the right to have a court reporter record my plea;

[RMG] (5) I represent to the trial court that the State will make the plea bargain agreement or recommendation, if any, set forth in the Waiver of Constitutional Rights, Agreement to Stipulate, and Judicial Confession herein and I understand the consequences, as set out above, should the trial court accept or refuse to accept the plea bargain or plea without an agreed recommendation;

~~[ ] (6) I understand that before sentence may be imposed, the Court must order preparation of a Presentence Investigation Report by the probation officer pursuant to Article 42.12, Sec. 9, V.A.C.C.P. I have thoroughly discussed this matter with my attorney and believe that for the Court to compel me to participate in the preparation of such a report would abridge the protection provided me by the Constitution of the United States and the Constitution and laws of the State of Texas and could result in further prejudice to me. Therefore, I hereby in writing respectfully decline to participate in the preparation of a Presentence Investigation Report and request that said report not be made prior to the imposition of sentence herein. I further knowingly, voluntarily, and intelligently waive any right which I may have to the preparation of said report either under Article 42.12, Sec. 9, V.A.C.C.P. or under Article 42.09, Sec. 8, V.A.C.C.P;~~

[RMG] (7) I understand that if the Court grants me Deferred Adjudication under Article 42.12 Sec. 3d(a) V.A.C.C.P. on violation of any condition I may be arrested

and detained as provided by law. I further understand that I am then entitled to a hearing limited to a determination by the Court of whether to proceed with an adjudication of guilt on the original charge. If the Court determines that I violated a condition of probation, no appeal may be taken from the Court's determination and the Court may assess my punishment within the full range of punishment for this offense. After adjudication of guilt, all proceedings including the assessment of punishment and my right to appeal continue as if adjudication of guilt had not been deferred;

~~[ ] (8) I further understand that if I was under 21 years of age at the time I committed the offense of driving while intoxicated, or an offense involving the manufacture, possession, transportation or use of an alcoholic beverage, or the manufacture, delivery, possession, transportation or use of a controlled substance, dangerous drug or simulated controlled substance that my Texas driver's license or my privilege to obtain a Texas driver's license and a driver's license in many other states will be automatically suspended for one (1) year from the date sentence is imposed or suspended in open court and that my driver's license suspension shall remain in effect until I attend and successfully complete an alcohol education program in this state. And, if I am over 21 years of age and I receive a final conviction or a suspended sentence for driving while intoxicated, or for violating the Controlled Substances Act, or a drug offense, my Texas driver's license will be suspended, and will remain suspended until I successfully attend and complete a drug or alcohol education program as prescribed by law, report the successful completion to the Court in which I was~~

~~convicted, and the Texas Department of Public Safety receives notice of the completion. I also understand that I may be eligible to receive a restricted license from the court during this period of suspension.~~

[RMG] (9) I fully understand the consequences of my plea herein, and after having fully consulted with my attorney, request that the trial court accept said plea;

[RMG] (10) I have freely, knowingly, and voluntarily executed this statement in open court with the consent of and approval of my attorney;

[RMG] (11) I read and write/understand the English language; the foregoing Admonishments, Statements, and Waivers as well as the attached written Waiver of Constitutional Rights, Agreement to Stipulate, and Judicial Confession, were read by me or were read to me and explained to me in that language by my attorney and/or an interpreter, namely _____, before I signed them, and I consulted fully with my attorney before entering this plea;

[RMG] (12) Joined by my counsel, I state that I understand the foregoing admonishments and I am aware of the consequences of my plea. I am mentally competent to stand trial and my plea is freely and voluntarily made. If my counsel was appointed, I waive and give up any time provided me by law to prepare for trial. I am totally satisfied with the representation provided by my counsel and I received effective and competent representation. Under Art. 1.14 V.A.C.C.P. I give up all rights given to me by law, whether of form, substance or procedure. Joined by my counsel, I waive and give up my right to a jury in

this case and my right to require the appearance, confrontation and cross examination of the witnesses. I consent to oral and written stipulations or evidence in this case. I have read the indictment and I committed each and every element alleged. I waive and give up my right of confidentiality to the pre-sentence report filed in the case and agree that the report may be publicly filed.

/s/ Raul M. Guzman
DEFENDANT

SWORN AND SUBSCRIBED BEFORE ME THIS _____ DAY OF DEC 05 1997, 19__.

/s/ C. Bacarisse
HARRIS COUNTY DEPUTY
DISTRICT CLERK

APPROVED:

/s/ M. Stansbury
ATTORNEY FOR STATE

/s/ Mark Kent Ellis
JUDGE PRESIDING

/s/ Edward M. Chernoff
ATTORNEY FOR
DEFENDANT